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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1960

No. 992

DISTRICT OF COLUMBIA,

Petitioner,

v.

FRANCES C. LEWIS (formerly Frances Carter Frick) Executrix of the Estate of Harold C. Frick, deceased,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

HENRY H. ELLIOTT,
HUGH C. BICKFORD,
Attorneys for Respondent,
917 15th Street, N.W.,
Washington 5, D. C.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1960

No. 982

DISTRICT OF COLUMBIA,

Petitioner,

v.

FRANCES C. LEWIS (formerly Frances Carter Frick) Executrix of the Estate of Harold C. Frick, deceased,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

In opposition to the Petition of the District of Columbia for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit in the above entitled case, Respondent states:

Statement of Question Presented

The Statement of Question presented as stated by the Petitioner is too broad. The question decided by the United States Court of Appeals for the District of Columbia Circuit is whether amounts paid by the Estate of Harold

C. Frick, deceased, to a former wife in lieu of alimony in accordance with a separation agreement entered into immediately prior to an absolute divorce decree is subject to District of Columbia inheritance taxes.

Statement of the Case

Petitioner's Statement of the Case, Page 5, is not full and complete and omits essential provisions of the separation agreement which may tend to mislead the Court as to the question here presented.

The opinion of Circuit Judge Bastian, Pages 1A-5A of the Appendix, carefully summarizes the separation agreement of 1934 and shows that all property rights including dower were finally settled in 1934 and the only unexecuted part of the agreement was support provisions for the wife, Vida M. Frick.

On January 19, 1961, the Court of Appeals, through a three-judge Division, held that "if the lump sum payment here was in lieu of the support obligation, then it is not subject to a transfer tax."

Reasons for Denying Writ

This Court does not ordinarily review decisions of the United States Court of Appeals for the District of Columbia Circuit which are based on statutes confined in their operations to the District of Columbia. *Del Vecchio* v. *Bowers*, 296 U.S. 280, 80 L.Ed. 229, 56 S.Ct. 190.

Petitioner cites *District of Columbia* v. *Pace*, 320 U.S. 698, 88 L.Ed 408, 64 S.Ct. 406, as an exception to the rule in Del Vecchio case. In the Pace case, this Court stated that certiorari was granted to decide "the scope of review of decisions by the Board of Tax Appeals of the District of Columbia." The question there is not one of interpretation of District of Columbia statutes.

This case involves an interpretation of the District of Columbia Inheritance Tax Statute passed by Congress in 1937. The specific question is whether an amount paid by a decedent's estate under a separation agreement to a divorced wife in lieu of alimony is subject to District of Columbia inheritance tax.

The District of Columbia inheritance tax statutes imposed a tax on shares of beneficiaries and gifts of property "transferred from any person who may die seized or possessed thereof, either by will or by law, or by right of survivorship, and all such property, or interest therein, transferred by deed, grant, bargain, gift or sale (except in cases of a bona fide purchase for full consideration in money or money's worth) made or intended to take effect in possession or enjoyment after the death of the decedent * * * "

Petitioner's argument is based upon decisions involving Federal Estate Tax Statutes.

The Federal Estate Tax Statute, Section 812(b) of I.R.C. 1939, is more specific than the District of Columbia inheritance statute.

The pertinent part of Section 812(b) reads:

> "The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded upon a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth; * * *
>
> "For the purposes of this subchapter, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration 'in money or money's worth'."

The opinion of Judge Bastian states the history of the litigation on the question of taxability of support obligations.

In 1940, the Commissioner of Internal Revenue successfully convinced the Court of Appeals for the Second Circuit that a wife's right to support was one of the "other marital rights". *Meyer's Estate* v. *Commissioner of Internal Revenue*, 110 F.2nd 367.

This case was followed in 1946 by *Commissioner of Internal Revenue* v. *Maresi*, 156 F.2nd 929 (2nd Circuit) which held that if the payments to a divorced wife were provided for in the divorce decree it was not a "promise or agreement" between the parties to the divorce action and therefore not subject to Federal Estate Taxes.

In 1946, the Commissioner of Internal Revenue issued E.T. 19, Cum.Bull. 1946-2, 166, which states:

> "It is the view of the Bureau that the surrender of support rights is not one of the 'other marital rights' referred to in the section. The cases of *Meyer's Estate* v. *Helvering* (CCA 2, 1940) (110 Fed. (2d) 367, certiorari denied, 310 U.S. 651) and *Helvering* v. *United States Trust Co. et al* (CCA 2, 1940) 111 Fed. (2d) 576) will no longer be followed to the extent that they hold that the right of a divorced wife to support from a former husband during the joint lives of the parties is a marital right in his property or estate."

Accordingly, since 1946, the Internal Revenue Service has consistently held that support payments were an allowable deduction for Federal Estate Tax purposes.

The rule has been followed by the Commissioner of Internal Revenue since then. See Revenue Ruling 60-160 Cum. Bull. 1960-1, 374.

This Court referred to E.T. 19, *supra*, in *Harris* v. *Com-*

missioner of Internal Revenue, 340 U.S. 106 (1950), 71 S.Ct. 181, Note 1, page 185.

If the decision of Circuit Judge Bastian in this case is in error, then the Commissioner of Internal Revenue has been in error in his interpretation of the law of Congress since 1946.

As to the importance of this case to the revenues of the District of Columbia, the District Inheritance Tax Statute was enacted in 1937. This case in 1960 was the first to be presented to the Courts. Furthermore, since the *Marcus* case, *supra* and *Harris*, *supra*, even the much broader question of the taxability of property settlements is eliminated as it is a relatively simple matter for the parties to request the divorce court to approve property settlements, especially divorces granted by courts other than that of the marital domicile. Accordingly, it is highly problematical whether any of these cases will arise in the future.

Conclusion

Writ should be denied for the reasons that (1) decision by the Court of Appeals is correct and consistent with a fifteen year interpretation of Federal Estate Tax Statutes by the Commissioner of Internal Revenue, and (2) the question involves District of Columbia residents only and is of slight importance to District of Columbia revenues.

Respectfully submitted,

HENRY H. ELLIOTT,
HUGH C. BICKFORD,
Attorneys for Respondent,
917 15th Street, N.W.,
Washington 5, D. C.